

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

EVANGELINE RED and RACHEL  
WHITT, on Behalf of Themselves and  
All Others Similarly Situated,

Plaintiffs,

vs.

KRAFT FOODS INC., KRAFT  
FOODS NORTH AMERICA, and  
KRAFT FOODS GLOBAL, INC.,

Defendants.

No. CV 10-01028-GW(AGR<sub>x</sub>)

**ORDER CONFIRMING  
DEFENDANT'S DECISION NOT  
TO USE CERTAIN PHRASES ON  
FUTURE PACKAGING**

Judge: Hon. George H. Wu  
Action Filed: February 11, 2010

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE  
 2 NOTICE THAT, on August 23, 2012, in Courtroom 10 of the federal courthouse located  
 3 at 312 N. Spring Street, Los Angeles, CA 90012, the Honorable George H. Wu presiding,  
 4 a hearing was held on Plaintiffs' Second Renewed Motion for Class Certification.  
 5 Counsel for the parties appeared at the hearing.

6 In their Second Amended Complaint, Plaintiffs alleged that the labeling of Kraft  
 7 Foods products set forth below was misleading because the products contained certain  
 8 amounts of one or more of the following ingredients: partially hydrogenated vegetable  
 9 oil (trans fat), white flour, disodium guanylate, high fructose corn syrup, monosodium  
 10 glutamate, and sugar. Dkt. No. 58.

11 Plaintiffs in their most recent request for class certification (Dkt. No. 236-18)  
 12 proposed the following ten subclasses:

- 13 (1) The Ginger Snaps Subclass: All persons who purchased in California, between  
 14 April 1, 2008 and December 31, 2010, Ginger Snaps in packaging bearing the  
 15 phrase "Sensible Solution" and "Made with Real Ginger & Molasses!"
- 16 (2) The Vegetable Thins Subclass: All persons who purchased in California, on or  
 17 after January 1, 2007, Vegetable Thins in packaging bearing the phrases  
 18 "Vegetable Thins" and "made with real vegetables," and displaying images of  
 19 vegetables.
- 20 (3) The Premium Saltines Subclass: All persons who purchased in California,  
 21 between February 11, 2006 and June 30, 2011, Premium Saltines in packaging  
 22 bearing the phrases "Sensible Snacking," or "Sensible Solution."
- 23 (4) The Teddy Grahams 1 Subclass: All persons who purchased in California,  
 24 between April 1, 2006 and June 1, 2009, 10-ounce or 9.5 ounce varieties of Teddy  
 25 Grahams in packaging bearing the phrases "Teddy Grahams," and at least one of  
 26 the following phrases: "wholesome," "Sensible Snacking" or "Sensible Solution."
- 27 (5) The Teddy Grahams II Subclass: All persons who in California, between January  
 28 1, 2009 and December 31, 2011, 10-ounce or 9.5-ounce varieties of Teddy  
 Grahams in packaging bearing the phrases "Teddy Grahams," "Graham," and at  
 least one of the following phrases: "Smart Choices," or "help support kids' growth  
 and development."
- (6) The Honey Maid Grahams Subclass: All persons who purchased in California,  
 between February 11, 2006 and April 1, 2010, Honey Maid Grahams in packaging

bearing the phrases “Honey Maid Grahams,” “Honey,” “Graham(s),” displaying honey imaging (including photos or graphics of flowing honey, honeycombs and bees), and bearing at least one of the following phrases: “wholesome,” “Nutritionists Recommend,” Steps to a Healthier You,” “Sensible Snacking,” or “Sensible Solution.”

(7) The Ritz Whole Wheat Subclass: All persons who purchased in California, between January 1, 2007 and June 30, 2010, the Whole Wheat variety of Ritz Crackers in packaging bear the phrase “Sensible Solution,” “Steps to a Healthier You,” “Nutritionists Recommend,” and “Whole Wheat.”

(8) The Ritz Reduced Fat Subclass: All persons who purchased in California between February 11, 2006 and June 30, 2010, the Reduced Fat variety of Ritz Crackers in Packaging bearing the phrases “Sensible Snacking” or “Sensible Solution.”

(9) The Ritz Low Salt Subclass: All persons who purchased in California, between January 1, 2007 and June 30, 2010, Low Sodium or Hint of Salt varieties of Ritz Crackers in packaging bearing the phrase “Sensible Solution.”

(10) The Ritz Roasted Vegetable Subclass: All persons who purchased in California, on or after February 11, 2006, the Roasted Vegetable variety of Ritz Crackers in packaging bearing the phrases “Roasted Vegetable Ritz” and “made with real vegetables,” and depicting images of vegetables.

At the August 23, 2012 hearing and in the Declaration of Senior Vice President Jay Cooper, Defendant Kraft Foods stated that it had ceased using certain of the challenged statements on its product packaging for the Kraft Foods products included in subclasses 1, 3, 4, 5, 6, 7, 8 and 9. The Court concluded that certain of Plaintiffs’ claims would be rendered moot if Defendant agreed to enter into a court order that affirmed the representations made by Defendant in the Cooper Declaration. Dkt. No. 245. Defendant has agreed to do so.


The Court hereby ORDERS that Defendant Kraft Foods: (1) shall not use the phrase “Sensible Snacking” in packaging, advertising, or marketing material that is substantially or materially similar to the packaging submitted with the Second Amended Complaint on any future Original Premium Saltines, Teddy Grahams, Honey Maid Grahams, or Ritz Crackers Reduced Fat; (2) shall not use the phrase “Sensible Solution” in packaging, advertising, or marketing material that is substantially or materially similar to the packaging submitted with the Second Amended Complaint on any future Ginger

1 Snaps, Teddy Grahams, Honey Maid Grahams, Ritz Crackers Whole Wheat, Ritz  
 2 Crackers Reduced Fat, Ritz Crackers Hint of Salt, or Original Premium Saltines; (3) shall  
 3 not use the phrase “Help Support Kids’ Growth and Development” in packaging,  
 4 advertising, or marketing material that is substantially or materially similar to the  
 5 packaging submitted with the Second Amended Complaint on any future Teddy Grahams  
 6 products; and (4) shall not use the phrase “Smart Choices” in packaging, advertising, or  
 7 marketing material that is substantially or materially similar to the packaging submitted  
 8 with the Second Amended Complaint on any future Teddy Grahams. However, nothing  
 9 contained herein shall apply to any remaining previously printed packaging that is  
 10 currently in the marketplace or is in the process of being used up as noted in the Cooper  
 11 Declaration. This order shall not apply if Kraft Foods substantially or materially alters  
 12 the formulation of the Kraft Foods products, such as substantially or materially different  
 13 ingredient list, weight by percentage of ingredients, or nutritional profile. Defendants’  
 14 agreement to this effect shall not be construed as an admission of liability or as evidence  
 15 of any wrongdoing.<sup>1</sup> The Court retains jurisdiction to hear any challenges as to the  
 16 compliance with this order.

17 The Court also hereby DENIES class certification to Plaintiffs’ proposed  
 18 subclasses 1, 3, 4, 5, 6, 7, 8, and 9 pursuant to the findings made in the Court’s  
 19 August 23, 2012 tentative order (Dkt. No. 245).

20 IT IS SO ORDERED.

21 DATED: October 25, 2012

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22 The Honorable George H. Wu  
 23 U.S. District Court Judge  
 24  
 25

26 <sup>1</sup> It is the Court’s understanding Kraft Foods transferred the Snacks & Confectionery  
 27 Business Unit to a separate corporate entity named Mondelez Global LLC as part of  
 28 an overall transaction that culminated in the creation of two separate companies at the  
 close of business on October 1, 2012. This order will apply to Mondelez Global LLC.